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AUTHOR Thompson, William N.; Marie, Janice
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ABSTRACT

The fire at the MGM Grand Hotel in Las Vegas, Nevada, brought to light a lack of compliance with the freedom of information philosophy and its supporting statutes. Freedom of information means circulation of important information. However, at the Grand Hotel, the hotel staff had not been properly trained in disaster procedures, the escape directions of the international hotel were printed only in English, and hotel guests were not properly informed of the extent and seriousness of the fire. The MGM corporation continued to limit freedom of information following the fire. They controlled, for example, the flow to stockholders of insurance and fire inspection reports citing faulty fireproofing and other violations. As numerous lawsuits were filed against MGM, the corporation continued to hamper the investigations of plaintiffs' attorneys and others by restricting access to the hotel property. In addition, the ambiguities of the Nevada Public Records Act kept the press from gaining access to fire inspection records. Disasters will occur, but the frequency and severity of disasters can be lessened considerably by a vigilant public given the required tools--which can only be furnished by full freedom of information. (HTH)

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FREEDOM OF INFORMATION CENTER REPORT NO. 437

FOI AND FIRE AT THE MGM GRAND

This report was written by William N. Thompson, associate of Public Administration, and Janice Marie, assistant Catalogue Librarian, both at the University of Nevada in Las Vegas.

"It's literally inconceivable that you can have that type of total devastation in a building of primarily non-combustible construction. Your're talking about a building that's built out of steel and concrete. . .It's just total devastation." These were (Las Vegas **Review-Journal**, 11-23-80) the remarks of Nevada State Fire Marshal Tom Huddleston just one day after disaster had struck the world's largest resort hotel, The Las Vegas MGM Grand.[1]

Inconceivable. But it happened: Friday, Nov. 21, 1980. A non-combustible steel-structured casino, "an opulent strip showpiece with its plush scarlet carpeting and sparkling crystal chandeliers" was now described (**Review-Journal**, 11-23-80) as a "charred battleground — a skeleton of burned out blackjack and crap tables, slot machines and roulette wheels."

More tragically, however, was the fact that smoke from the casino fire had entered stairwells and elevator shafts leading to the 2,100 rooms in the adjoining hotel structure. Smoke moved freely through holes cut in the firewalls in order to aid construction on airconditioning as well as a 700-room addition to the hotel. Thousands of guests were trapped. Unwarned and uninformed, they were left on their own at 7:00 a.m. to figure out how to survive. Heavy black smoke that could be seen and smelled miles from the hotel spread to upper floors, which could not be reached by fire ladders. Heroic rescue teams from Clark County and area fire departments, the Metropolitan Police Department, and nearby Nellis Air Force Base quickly went into action. Undoubtedly, hundreds were saved from certain death by these personnel who flew by helicopter to the hotel roof, scaled the exterior of the structure, and entered the building time after time to bring hotel guests to safety. But 84 could not be saved. Most of the victims succumbed to smoke inhalation.

The "inconceivable" had resulted in a horror story of death, pain, suffering, and statistics: 84 dead, 706 injured, 308 of these hospitalized, building destruction counted in tens of millions of dollars, one-half of the earnings of a major corporation — MGM Hotel, Inc. — stopped, and 4,500 people unemployed. State and local governments faced grave budgetary consequences: fighting the fire cost the Clark County fire department an estimated $180,000; the southern Nevada Memorial Hospital $110,908; the county building and zoning department $29,667; the Metropolitan Police Department $20,000; and the County Coroner's Office $18,000. The county stood to lose $1.7 million in gaming tax revenues, the Convention and Visitors Authority $800,000 in room taxes. State revenue losses were comparable.[2] Additional governmental costs will inevitably arise in terms of social service costs in programs such as unemployment compensation.[3] Costs to state and federal courts loomed large as the suits were filed. Scores of suits asked hundreds of millions in damages. Court dockets will carry the name MGM Hotels, Inc. for years to come. The expected flood of cases could possibly force (**Review-Journal**, 11-25-80) the state Legislature to expand the judiciary by four judgeships.

The inconceivable disaster occurred. The costs were measured in lives and dollars. Yet a thread running through the entire hellish scenario was the issue of Freedom of Information.

Warning Alarm Systems

The basic, most elementary function of the political system is the preservation of public safety. The most rudimentary social organizations found among the most remote bands of human beings are devoted first to safety and protection against harms coming from within the community or from exterior sources. In our advanced social order, we cannot lose sight of this most basic function of society: safety. Yet it was lost from sight in a multitude of ways at the MGM Grand Hotel.

Las Vegas is an international city. Its prosperity depends upon tourism. Its rooms and casino halls are always filled with strangers, often from strange lands. They place their safety in the hands of others. Yet they are also expected to react to danger with individual action. When one hears a police siren, he moves his car to the side of the road; when one hears a fire alarm, he leaves a building. Critical to the required individual action necessary for preservation at the MGM was an alarm system and a plan of action for disasters. Unfortunately, the lack of such a basic survival information system cost the lives of 84 people.

At the first stage of the casino fire a call was made to the Clark County Fire Department station immediately across

Summary: The tragic fires at the MGM Grand Hotel and two months later at the Hilton Hotel took their toll in lives, means of livelihood and dollars. The MGM Grand fire, in particular, brought to the forefront the lack of compliance with the Freedom of Information philosophy and its statutes.

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from the hotel entrance on Flamingo Road. The call indicated a small fire. One truck responded. Inadequate immediate information within the hotel cost time. With smoke, time is measured in lives. A hotel alarm system was triggered from a centralized, electrical bank. When the fire, which started in electrical equipment in panelled walls near the casino, reached the open flammable materials in the casino room, it erupted. A wall of flames shot across the massive room — the largest casino room on the Las Vegas strip — unimpeded by non-existent sprinklers until it reached other electrical control areas. There it knocked out both the hotel telephone and fire alarm systems. There was one centralized fire alarm system. All hotel alarm devices worked through the one electrical bank. No self-contained smoke alarms were deployed to give independent warnings.[4]

The personnel that informed the Clark County Fire Department about the fire did not have time to make a second call nor to trigger the alarm. There was opportunity for only one, inadequate warning, and then it was too late. The structural defects of the warning system were therefore compounded by a human decision. One hotel guest tried to no avail to get hotel guards and employees to recognize the danger of early smoke that he observed, but they did not take (**Review-Journal**, 11-27-80) his warning seriously. A waitress "told me the fire was at the restaurant next door and not to worry. There was a cop or somebody in uniform there. I said, 'Shouldn't you be telling people to get out of here?' But he said he was watching a purse-snatcher, and the smoke wasn't his problem."[5] The testimony of this guest confirmed (**Review-Journal**, 12-21-80) the fact that MGM Hotel personnel were not trained in disaster procedures. A desire to not perceive danger is probably built into all employees by managers who necessarily must keep their eyes on a central commercial goal — maintaining operations and the flow of business. It is probably an attribute of all humans to not give quick recognition to facts that upset life routines. It should, however, be recognized as good management practice to contemplate the need for a safe environment for "paying customers." That safe environment can be secured only if all employees of organizations are trained in emergency procedures and given the confidence of management to take quick individual action to stop the flow of business and furnish valuable information when safety requires it.

Public safety rescue personnel must be trained and ever ready to react quickly and effectively when disaster strikes. Las Vegas area emergency workers — firefighters, police, doctors, ambulance and hospital personnel, and military help — deservingly received many plaudits for the superb efforts they made Nov. 21, often at risks to their own lives. Nonetheless, it has been suggested that they could have done a better job, if they had had a more effective communications system. American governments, who boast of being close and responsive to the people, must inevitably be prepared to coordinate their diverse resources in times of disasters. Metropolitan areas consist of a multitude of governments and agencies. Las Vegas and Clark County offer no exception. A concerted response to the MGM fire was needed, but was poorly supplied. One batallion chief from the Las Vegas City Fire Department highlighted the problem. After the fire, Chief Leroy Leavitt urged that every community in the Las Vegas Valley be put under one chief. He indicated that the city firefighters could have reached the MGM about 15 minutes earlier had they been permitted immediately to enter the jurisdiction of the Clark County Fire Department. "With a united department with one chief at the top, you could have cut your fire loss. . .we could have gotten more people there immediately." As a consequence of divided jurisdictions and non-coordination of training, the city firefighters "didn't even know where the hookups were" when they were called to the MGM. "Our firemen have never seen the inside of the MGM Grand," Leavitt said. "Their firemen have never seen the Fremont. . . .You need 300 to 400 firefighters to put out a fire like this. . . .We have it in the Las Vegas Valley if you quit playing politics." Leavitt maintained (**Review-Journal**, 11-24-80) that the coordination of the diverse fire-fighting units "was three or four on a 10 scale." An added concern was his contention that the firefighters "couldn't even communicate with helicopters trying to rescue guests." "Anything that hampers firefighters, hampers rescues," he concluded.[6]

The concentration of an alarm-triggering system in one location with no failsafe or backup system, the lack of independent smoke alarms in rooms or the casino; the non-existence of an internal communications system capable of carrying rescue directions when the telephone system went down and the inadequacy of communication among rescue personnel were all fatal flaws in an information system. Freedom of information was impossible to attain and the public safety impossible to protect because effective warning systems did not exist.

It was learned during the disaster that rooms had access to television sets that were functioning even though the telephones were out. Local television stations provided critical advice to many hotel guests. Specifically, they were urged to stay in their rooms and seal airflows from doorways. Suggestions to open windonws were not universally appropriate as a considerable amount of smoke clung to the exterior structure of the building and in some cases was sucked into rooms through open windows. Subsequent investigations, however, revealed that most fatalities struck those who received no warning and died in smoke-filled rooms, or those who left their rooms for the densely smoke-engulfed interior hallways. No effective engineering plan was available to anticipate necessary escape procedures for such a fire. Fire escape directions were inappropriate for the smoke situation. And all directional signs in the hotel were in one language — English.

One of the first lawsuits filed came as a class action from a group of 375 Mexican Nationals staying in the hotel. The group suffered 15 fatalities. A major contention of the Mexican contingent was that all available information — partial and inadequate as it was — was expressed only in the English language.[7] Yet even large numbers of the native Las Vegas work force at the strip hotels speak a foreign language as their primary language. Moreover, the efforts of Las Vegas to reach out to a worldwide consitutency in marketing its products are successful in attracting large numbers of foreign guests. These people certainly are entitled, as are others, to the freedom of information needed to allow them to protect themselves.

Corporate Information

The New York Stock Exchange is structured to discourage trading on inside private information. As soon as the first people at the exchange became aware of the Friday morning fire, they took (**Review-Journal**, 11-23-80) the stock out of trading.[8] Later in the afternoon when the financial community was sufficiently knowledgeable about the existence of the disaster and a fair market trading system based

upon public awareness could be re-established for the stock, trading resumed.

Ironically, on the next trading day, Nov. 24, the Corporate Annual Report arrived at stockholders' homes with its optimistic words and lavish photographs of what no longer was. The location of the annual meeting scheduled for December 1980 was to be the MGM in Las Vegas. One could anticipate that the meeting would be moved. However, it was very bothersome to learn that the directors did not choose another Las Vegas area location. The disaster was certainly the most critical corporate event of the year, if not in the entire history of the new corporation, a split-off from MGM films. But by putting the meeting at the MGM Reno Hotel, 500 miles away, many interest stockholders were denied a crucial opportunity at gaining at least some visual information regarding their investment.

In the tradition of Ralph Nader types, Evelyn Davis, portrayed by some as a stockholder gadfly, holds several MGM stocks in order to have the opportunity to probe the secrets of corporate managements with the purpose of protecting general stockholder interest. She maintains that her goals are basically to protect her investment as well as the public interest. The fire no doubt gave immediate rise to her concerns for the corporation. She publically challenged (**Review-Journal**, 12-16-80) the corporation management with news releases claiming that it had withheld information regarding safety in the hotel's construction and that after the disaster it had concealed information regarding the full impact of what had taken place.

The annual meeting was interrupted frequently by Davis and other stockholders who claimed that they were being denied information about the fire. "All you guys are interested in is making money in casinos. . . .It's the same lack of disclosure you gave the fire officials in Las Vegas," shouted Davis. Chairman of the Board Fred Benninger repeatedly gavelled down Davis. The shareholder also expressed (**Review-Journal**, 12-17-80) dismay that television and news media cameras were excluded from the meeting, and that majority stockholder Kirk Kerkorian did not attend the meeting to respond to requests for information.[9]

Corporate restrictions on the flow of vital information were traced back to insurance records. The "inconceivable" event of a fireproof, steel-structured casino buckling under flames seemed much more conceivable when an insurance-advising agency in San Francisco indicated that they had made a previous investigation of the MGM Grand.

Herman Spaeth, supervisor of codes and standards for the Insurance Services Office, claimed that he had written a report critical of the fireproofing methods used on steel supports in the casino. Fireproofing materials must be coated onto structural steel, otherwise it will collapse under heat of 1,000 degrees within five minutes. Such heat is common in large fires. Spaeth indicated that the needed materials were applied in such a manner that they would easily fall off the steel supports and probably did.

Other fire experts, according to the San Francisco **Examiner**, said that steel girders not coated with fire retardant might create a hazard when the distorted steel pulls away from its casing, "creating a chimney effect." The Nevada Insurance Commission received a report from Spaeth regarding the faulty application of fireproofing. The commission initially gave the hotel a "very, very low" fire rating. However, after several hearings it raised the rating, thus allowing the hotel to pay lower insurance premiums. After the fire, executives of the construction company that built the hotel indicated that they had never had any problems in construction, all codes had been met, and they had "no recollection" of any allegations regarding the fireproofing. They also could not recall any hearings on the subject. The report Spaeth had written was "locked in the company safe" and was not available (**Review-Journal**, 11-23-80) to reporters, according to the **Examiner**.

The warnings from the insurance services office were ignored or hidden. So too were demands from the Clark County Fire Department that sprinklers be added to the casino area as a condition for approval to build a 700-room addition to the hotel. Jim Barret, assistant chief for fire prevention, took this position as late as February 1980, contending that the new rooms would add to the demands on the casino room. The only response was (**Review-Journal**, 12-21-80) a "stonewalling" letter written to the county building and safety department from MGM architect Fred Anderson claiming that the sprinklers in the casino area were not required by law.[10]

In April, Fire Inspector David Lovelace wrote an eight-page letter to Paul Ross, general manager of the MGM Grand. The letter outlined dozens of deviations from safety standards with equipment in the hotel kitchen areas. A follow-up letter in June indicated that the MGM had complied with only some of the suggestions for correction. The problem with the demands that Lovelace made was that the kitchen equipment was certified as proper when it was installed. In order to charge code violations, Lovelace would have to secure the original installation manuals for the equipment and then demonstrate that the hotel had modified the equipment or installed it improperly. Neither the hotel nor the manufacturers would give (**Review-Journal**, 12-21-80) Lovelace access to such manuals.

A letter sent to the MGM a year earlier on June 18, 1979, highlighted the problem of holes in firewalls. Several holes had been discovered in stairwells. Some of these were uncovered, others were covered only by plywood planking. The county fire inspectors indicated (Las Vegas **Sun**, 12-4-80) that better smoke-proofing was needed. The warning letters and hotel responses were not completely hidden from the view of interested parties. It was just that parties seemed not too interested until after the fire. It was not until the press requested to see MGM files that this information came out.

New Ordinances

The fire prompted an examination of codes, their enforcement, inspection procedures and general adequacy of public safety.

The question of retroactivity was prominent in discussion, especially in the corridors of city hall in downtown Las Vegas. While the fire was not in the city proper, the shock was certainly felt by the city fathers. As they gathered forces, they discovered that they had passed an ordinance on fire safety for high-rise buildings nine months before. All buildings 10 or more stories high were required to have voice communication systems and emergency electrical generators. No attempt had been taken by city fire inspectors to secure compliance with the ordinance. Indeed most of the 14 high-rise buildings were not aware of the requirements. The city council evidently had not communicated its desire for enforcement to the fire officials, and in turn to the building owners. Since the city hall was one of the buildings in a state of non-compliance, perhaps the city manager also was unaware of the new ordinance. Fire Inspector Raymond Peeples moved (**Review-Journal**, 12-12-80) into action and wrote

letters to the building owners indicating that compliance would be required by March 1982. The effect of the ordinance would be retroactive, to be applied to all buildings old and new.

"It's going to be pretty expensive for most of these buildings, but a lot of cities wished they had a retroactive provision in their fire laws. I'm just glad we have it now."

Peeples took nine months to start informing the high-rises because he "overestimated the safety" of the downtown buildings. Said Peeples (**Review-Journal**, 12-12-80): "If I'd known something like the MGM fire could have happened I'd have sent those letters out a long time ago. Something like that wakes everybody up."

The impact of information in an atmosphere of immediacy and danger can be shocking. While the fire inspectors feared some court challenges to the retroactive nature of the safety requirements, there was none. Just one day later the owners of the high-rises said they would honor the municipal law. "Cost is really no question," said (**Review-Journal**, 12-13-80) Eldon Tuttle, Mint Hotel security director. "It's a competitive industry and we're going to have to be safe. If the fire department recommends it, I'm not about to fight it in court. Safety is the number one priority."

The county quickly seized upon the occasion to begin work on a new ordinance requiring alarms and sprinkler systems. To gain a hold on the impact the ordinance would have, County Manager Bruce Spaulding surveyed all casinos and released a report on their fire safety systems. The report revealed (**Review-Journal**, 12-5-80) that 11 major resorts lacked casino sprinklers. The district attorney quickly issued an opinion to the effect that any hotel or resort that engaged in building expansion or renovation could be required, if an ordinance was adopted, to retrofit the casino areas with sprinklers and other safety systems. The building inspectors would only have to show (**Review-Journal**, 12-5-80) that there was a relationship between new construction and existing facilities, either in terms of volume of traffic or patterns of traffic within the buildings.

Litigation and Information

While local lawmakers were pondering the future, lawyers were focusing their attention on the rubble lying on Flamingo Road and just what it could tell about the past.

As the number of potential lawsuits mounted, another major information question had to be confronted. Lawsuits are attempts to reconcile facts with law in establishing responsibilities and liabilities between persons. The law governing disasters and responsibility will no doubt be difficult to establish with any degree of finality. The lawsuits that cannot be compromised outside of court will not be quickly resolved in court. No doubt the process will involve many stages and court levels, with appeals almost certainly following. The quest for facts should, however, be more definitive. The truth is to a large degree hidden in the rubble of the MGM's casino, halls and passageways that brought the deathly smoke through the MGM hotel structure. Because the MGM Corporation controls the territory in which the truth is to be found, a basic conflict of interest arose regarding access to the hotel structure by attorneys representing plaintiffs suing the hotel. First, the hotel must have some natural reluctance to furnish evidence that may be self-incriminating. While the constitutional protections in such civil actions vary from defendants rights in criminal accusations, there is, nonetheless, an analogy with the criminal law procedure. A party does not enjoy being forced to testify against himself. Access in a sense amounts to such testimony. Secondly, the MGM Hotel did employ 4,500 persons. It achieved gross revenues in the hundreds of millions of dollars, with nearly $5 million going to the state government each year in the form of taxes. It was imperative for community and corporate reasons for the MGM to be repaired as quickly as possible and put back into operation — albeit with much improved safety mechanisms.

Wendell Gauthier, an attorney for two Louisiana couples who were suing the hotel for $4.6 million, sought (Las Vegas **Sun**, 12-3-80) a temporary restraining order to halt MGM employees from cleaning up the hotel until an independent inspector could complete an investigation for his clients.

The hotel had agreed Dec. 3 in the court of federal District Judge Roger Foley to allow an investigator, George Martinson, to have four days to inspect the hotel. He was to be given "reasonable limited access," provided that he complied with hotel security procedures. Gauthier wanted more. "It is essential we be allowed to mark and take from the premises whatever we need," he said. He estimated that at least 10 days would be needed. Foley, however, emphasized the need to proceed with a clean-up to achieve safe conditions within the building.[11]

On Dec. 7, attorneys for new plaintiffs won the right for an additional week of investigation. To deal with the confusion inherent in many separate actions, Judge Foley approved (**Review-Journal**,12-9-80) an order creating a committee of attorneys to conduct the search of the hotel by all plaintiffs. The lawyers expressed additional concern later in the week, as they filed a joint motion to ensure that the MGM would preserve documents pertaining to the construction and modification of the hotel. The attorneys feared that the MGM might destroy critical documents. The motion had apparently arisen because of a complaint by a private investigator that he was prevented from examining an MGM file labeled "incidents." It was felt that such files might contain reports of past fires and related problems, and they might be destroyed in the clean-up of the hotel. MGM attorney Steve Morris said that the hotel had no such intention of destroying any records. While the lawyers insisted that the hotel list all its records, Judge Foley requested that the attorneys file a more specific motion indicating precisely what records they wished to have preserved. Foley felt that the heavy burden of full disclosure should not fall on the MGM without at least some prior indication of what the attorneys wished to examine. The hotel agreed to preserve all records on the premises until such motion could be made within two weeks. Both sides were groping for a solution to a problem of information flow, and as the episode unfolded it appeared (**Review-Journal**, 12-13-80) that compromise under the guiding hand of a federal judge could be attained.

Secrecy and Inspection Records

It was the press, not lawyers or lawmakers, however, that precipitated the greatest amount of attention of fire safety after the MGM disaster. Immediately after covering the fire, reporters dug into the files of the county building department and the fire inspector's office. Here they found memos that had been sent to the MGM with warnings about fire saftey and memos from the fire inspectors to building inspectors regarding the inadequate fire coatings of steel at the MGM. Here also they found public officials closing file drawers and denying press access to official records.

The first attempt to deny access to records was made on the Monday following the fire. While reporters were going

through building department files on the MGM, county officials, by order of County Manager Spaulding, closed the files. Later in the day Spaulding reopened (**Review-Journal**, 11-25-80) the files claiming it had all been a misunderstanding and that the files were closed only so that they could be moved to his office.

The county was not as eager to confess error when Fire Inspector Roy Parrish closed his fire inspection files on strip hotels and indicated that they would remain closed pending an opinion from the district attorney. The files on inspection of all hotels other than the MGM were closed two days after the fire. Parrish commented (**Review-Journal**, 12-5-80) that "I had radio, television and newspaper wanting to go through the files and I don't have the room for that nor would I have quality control over it." He said that he had decided two days after the fire to close the files because he was barraged with media requests to inspect them. Asked why they were sealed, Parrish said (Las Vegas **Sun**, 12-4-80) "There's no reason really. I'm not going to allow everybody and his brother to go through the files. That's the way it's going to be now."

Two county commissioners did take exception to the action, however. David Canter and Manny Cortez maintained that a district attorney's ruling on public access to the files should not be requested because the county had maintained the files as open in the past. "Obviously, nobody is going to have to go to court to get them open because they are public record," commented Canter; Cortez observed that "it's a matter of policy. Anyone who wants to come and see them should be able to." He agreed (**Review-Journal**, 12-4-80) that persons should not be allowed to "rummage through them without any direction. They should be protected so nothing is destroyed or taken" but otherwise should be available for public scrutiny.

The county manager reiterated Fire Inspector Parrish's desire for a ruling from the district attorney, stating that he feared potential excesses if all building records were open. "I don't want some attorney messing around for possible liability suits." He also worried (**Review-Journal**, 12-6-80) that burglars could take advantage of open records by learning building floor plans.

Deputy District Attorney Stanley W. Parry concurred with the fire inspector's power to close the records. In an eight-page opinion issued from the district attorney's office he maintained that records could be withheld from the public if the fire-safety files contained information from "confidential sources" or if they exposed "trade secrets." Safety inspection reports, however, were open to the public. The reports contained dates of inspections and any violations found. Investigatory files would be closed unless the fire inspector found that they did not contain information from "confidential sources" or if they exposed "trade secrets." Safety inspection reports, however, were open to the public The reports contained dates of inspections and any violation found. Investigatory files would be closed unless the fire inspector found that they did not contain information that could expose fire department sources or reveal secrets. Some inspection notes, for instance, disclosed security devices and this information was beyond the public's right to know, according to Parry. Individual files would have to be evaluated on a case-by-case basis and "all fire department resort files may have to be reviewed." No review process has been established.

The situation according to **Review-Journal** (12-6-80) reporter Dale Pugh was made difficult because of the ambiguous nature of the Nevada Public Records Law.

The law has received little attention in its 70 years of existence. As the law provides the context for resolution or non-resolution of a major FoI problem arising out of the MGM disaster, it becomes appropriate to focus attention on the law itself.

The Nevada Public Records Act

The Nevada Public Records Statute appears as Chapter 239 of the Nevada Revised Statutes. The basic provision of the law was written in 1911. It appears to be clear and concise. However, doubts as to its exact meaning in application arise from the fact that many other laws extend confidentiality to records, and also from the fact that there are no legislative records from 1911 to indicate the content of debate regarding the passage of the law. Minutes of Nevada's legislative committee meetings and legislative sessions were not recorded prior to 1965.

The general statement regarding records is as follows:

> Public books, records open to inspection; penalty. 1. All public books and public records of state, county, city, district, governmental subdivision and quasi-municipal corporations officers and offices of this state (and all departments thereof), the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memorandum prepared therefrom, and any copies, abstracts, memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of the records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public. 2. Any officer having the custody of any of the public books and public records described in subsection 1 who refuses any person the right to inspect such books and records as provided in subsection 1 is guilty of a misdemeanor.[12]

Most subsequent portions of the act have been added or revised since 1911, and basically they do not speak to the question of openness, but to preserving records, certifying copies of records for the Veteran's Administration, microfilming records and disposing of originals or obsolete records, and restoring lost or destroyed records.

An analysis of the Nevada Public Records Statute is greatly aided by Judith Baldwin's 1962 FoI Report "Access Laws: A Comparison." The study makes references to many state statutes as well as Sigma Delta Chi's Open Records Act. Baldwin utilized 10 measures for her comparisons of laws. The measures can be used as a guide to the Nevada act.

1. The first criterion examined is the intent of the legislation. Nevada's act is deficient in two regards. It does not declare an intent, and there is no record of the legislative debate.

2. The scope of coverage of the Nevada act seems to be clear and adequate. It applies to both state and local records, with all public agencies deemed to fall under its coverage. The act expands the coverage recommended by the Sigma Delta Chi model with the addition of quasi-municipal corporation officers and offices. However, in contrast with several other states, the list of governmental agencies is not detailed.

3. In comparison with the extensive definition of other states' public records, Nevada's records law seems rather

vague since it only mentions all public books and public records. Other types of records collectively noted in numerous state laws include recorded sounds, films, magnetic tapes, data compilations, pictures, symbolc, magnetic or punched cards, discs, drums, memoranda, electronic data processing records, correspondence, photographs, salaries of state employees, financial statements, contracts, examinations, opinions, manuals, and staff reports.

Even though Nevada's public records statute omits a list of type of records, other separate statutes provide for public inspection of certain records, some of which require special conditions. The records available for inspection are the board of county commissioners' books, records and accounts; records maps, charts, surveys and other papers on file in the office of the county recorder; certain papers and pleadings of a divorce action; judgment dockets; minutes of public meetings of state and local agencies, including some minutes of closed meetings; and all certificates (of vital statistics) in the custody of the state registrar subject to the provisions of NRS 440.170. Committee minutes of Nevada's Senate have also been designated in the 1977 statute as open to public inspection; however, Nevada's assembly does not likewise provide for public inspection of its committee records.

4. Nevada's public records law liberally allows any person to inspect records at all times during office hours. Procedures for inspection are stated only in relation to the following situations: 1. a request made of a county recorder for an item in storage; 2. a request for a record to be used by the Veteran's Administration to determine eligibility for VA benefits; and 3. a request for a certified copy of a public record. The actual procedures applied in the preceding situations are, respectively: a microfilmed copy of the stored item or the original shall be available within three working days after the request; a certified copy without charge shall be provided". . .an applicant for the benefit or any person acting on his behalf or the representaive of the Veteran's Administration. . . "; and fees for copying and certifying are payable by any person who requests such a copy of a public record.

5. Exceptions to open records are designated by separate statutes in Nevada. While these are cross-referenced at the beginning of Chapter 239, they are difficult to trace down unless one has full sets of the loose-leaf volumes of the Nevada Revised Statutes, and also sufficient time to grasp the proper route through its maze of pages.

The various other Nevada statutes prevent the inspection of the following records: files and records of the court in adoption proceedings except by order of the court; divorce actions, upon written request of either party to the action, except to the parties or their attorneys; and juvenile court records except by court order.

6.and 7. The time and procedures for inspection of records by the public seems to be clearly stated in the general provision of the Nevada act: "at all times during office hours" records may be "fully copied or an abstract or memorandum taken therefrom." If records have been placed in storage, they must be made available within three working days. Recommendations of the SDX model for photocopying locations and supervision are missing fom the Nevada statute. The Nevada act seems to be specific in stating that records are always available during working hours. However, this absolute statement allows no room for consideration of work obligations of public employees or for the needs of public officials to have access to the same records. The possibilities of multiple public requests for the same document are not contemplated. The lack of fall-back procedures for situations when official convenience must necessarily result in no access may play into the hands of those who maintain that such inconvenience becomes a legal justification for total denial of access. The Clark County Fire Inspector seems to have been following just such a line of reasoning in his initial actions sealing records.

8. The eighth criterion for analyzing access laws deals with penality provisions for non-compliance. The Nevada act makes a refusal to release public records a misdemeanor. The destruction, concealment or falsification of records pertaining to his office subject an official to felony charges. There is no evidence that such misdemeanor or felony charges have ever been leveled against public officials in the Sagebrush State. The penalties seem severe but if they are not used and are not widely felt by public officials to be potential dangers of unwarranted secrecy, they are probably not too effective.

9. Compliance not retribution best serves the public needs, but Nevada has no provision indicating the path the public may go in order to assure that officials will obey the records law. General state provisions would allow a citizen to approach the district court with a request for a writ of mandamus requiring compliance.

10. The final criterion mentioned is the provision for photographing records open to inspection under the custodian's supervision and the recommendation for designating the specific location for photographing the records. Nevada's law is clear that the right to photocopy exists at a cost to the citizen. However, exact procedures and location of copy equipment is not specified.

Resolution of FoI Problems Discussed

The Nevada Public Records Act devotes its main thrust at issues peripheral to the struggle for Freedom of Information. The initial statement regarding open records is a strong position statement. However, it is modified by references to a multitude of other statutes, ones pertaining to marriages, divorce, adoption, juvenile courts, prison records and others. This style of codification allows the opponents of Freedom of Information the advantage of making others search out the negatives, and also affords the legislators the opportunity to hide provisions limiting openness.

A recodification should place all statutes regarding open records under the same title. Further the initial statement on openness should be followed by precise procedures for viewing and copying records and by conditions that might permit a public official to deny immediate access to a record that is otherwise open.

Perhaps a specific time framework recognizing potential inconveniences could be established. But under no circumstances should the mere convenience of public employees be used as a legal justification for permanent or ongoing denial of access to open records.

A clarified set of procedures could resolve sticky questions about "proper motives" and also assure that citizens wouldn't lose their legal opportunity to act on requests because of the timeliness of court action. The statute should make the conditions for court requests specific and list the specific court action and court to which the request should be taken. Attorneys General's opinions should be encouraged to fill in gaps in information. However, such opinions do not supercede court action, nor can they be initiated by citizen request.

An interview with a leading Las Vegas attorney and for-

mer assistant to the district attorney indicated that lawyers used the statute for purposes of gaining information for litigation more than did either the general public or the news media. He indicated that the district attorney's office occasionally made use of the statute to inspect certain public records. His only criticism of the statute was that the penalty for noncompliance should not be a misdmeanor, but rather a stipulation that the offending official would have to pay all legal fees incurred if guarded records were determined to be public records.[13]

Regarding the definition of "public" in "public record" improvements can be made in the Nevada Public Records Act. If Nevada really means that all state and local government records should be public, as the main thrust of the legislation seems to indicate, clarifications and affirmative statements could resolve disputes such as arose following the MGM disaster. In calling for a specific listing of closed records in the same title as the openness statement, most doubts could be resolved. If for instance, lawmakers agree that business secrets are contained in inspection records and these should not be revealed to the public, the lawmakers should say so in no uncertain terms. However, because there are some emerging areas of rights of privacy , such as police and school records, personnel files, etc., a positive statement regarding which of the records in these doubtful areas are public and which are private should be made part of the open records statute. This listing of necessity would include a statement to the effect that all public records shall be open including, but not in any way limited to, the ones listed as open.

Further state corporation statutes could deal with the question of openness of private, corporate and business records. Certain matters directly affecting public safety and interest should be accessible to both stockholders and the general public, for instance, location of dangerous materials or radioactive materials, public safety devices, warning systems, and internal safety inspection records. Some economic information regarding the viability of the corporation in the future, or plans of a corporation to close or move a local plant should not be kept hidden, as information of this type can have drastic consequences on a large number of individuals — so much that only openness can preserve the public interest. Certain lines of course must be drawn in the private sector, product development: where safety is not involved, patent information, facilities sales in negotiation stage, advertising and marketing strategies — these are all proper matters for corporate secrecy. But the need for privacy should never again become — as it may have at the MGM Grand — a cover for deceiving the legitimate information needs of the public.

The city of Las Vegas and Clark County suffer from a "Sin City" image problem. Las Vegas is certainly not your typical American town. It tolerates behavior that is not tolerated elsewhere — gambling, 24-hour entertainment and drinking, and legalized prostitution outside of Clark County. Ties with criminal elements were evident in past development of strip businesses, and the FBI and State Gaming Commission must be ever vigilant that such influences do not again emerge in unhealthy ways. For these reasons, many people like to point their finger at Vegas when anything goes wrong. The MGM disaster provided another good excuse for those who suggest that the intrinsic character of "Sin City" caused this disaster. Where else would so many building code violations be tolerated? Where else would people (most of whom were not Vegas natives) go right on playing the slot machines? A good answer to these critics was given by the Reverend Billy Graham who perhaps was destined to be conducting his crusade at the convention center when that building had to be converted into the emergency medical center for victims as hospitals filled immediately. Graham witnessed the extraordinary efforts of hundreds of community volunteers during the disaster and summed it up (Las Vegas **Sun**, 11-22-80) when he said: "I have been present at many tragedies, but I have never seen a community respond to anything like Las Vegas has to this tragedy."

Freedom of information means circulation of important information. Smoke alarms and storm-warning systems are devices for freedom of information. Evacuation plans and shelter plans clearly communicated and adequately known by the public are devices for freedom of information. And freedom of informaton requires more than refusing to deny access to the press. It requires a press that actively pursues building code violations wherever they exist and reports on the same until they are corrected. It requires a press that will alert the public to weak regulations and then will support public leaders who will make necessary changes. The Las Vegas **Review-Journal** gave (12-14-80) editorial support to this new notion of journalistic responsibility:

> In sifting through the files of local fire and building officials, R-J reporters came across many warnings sent to local businesses describing fire code violations discovered during inspection. In several cases the letters were evidently ignored, because government officials were forced to repeat the warnings in subsequent messages. Some minor code violations at the MGM allegedly went uncorrected for two years.
>
> The files of local fire officials are public documents, but only after a fire such as that at the MGM have their contents been published in the local media. But beginning immediately, the **Review-Journal** will publish results of fire inspections undertaken by the city and county. We will also publish a list of businesses which have corrected violations.
>
> Through this new policy, we hope to encourage greater emphasis on fire safety on the parts of local persons. The glare of publicity can sometimes work wonders when normal bureaucratic procedures fail.

Disasters will occur. Murphy's law is on the books in each state, and the forces of nature are not controlled by man. But the frequency and severity of disasters can be lessened considerably by a vigilant public who is given the required tools, tools furnished by a full freedom of information.

FOOTNOTES

1. The MGM Grand in Las Vegas is the world's largest hotel in terms of floor space. Its 2,100 guest rooms make it the second largest in that respect in the United States. Only the Las Vegas Hilton has more rooms.
2. **Review-Journal**, 5 December 1980, p. 1A, 3A; The **Valley Times** (North Las Vegas), 27 November 1980, p. A2.
3. With average weekly unemployment benefits of $101 for 26 weeks, the state will have to pick up as much as $454,000 in these costs before the hotel reopens. State tax revenues from the MGM approached $5 million in 1979. The 1980 Annual Report showed that the MGM Grand grossed over $307 million and netted $33 million in that one year prior. **Las Vegas Sun**, 23 November 1980, p. 1.
4. Even if the centralized alarm had been set before the electrical bank was destroyed, it might not have gone off. It was learned as the fire was being investigated that the triggering mechanism was rigged so that it would delay going off for as many as five minutes so that hotel personnel could screen out false alarms. **Las Vegas Sun**, 2 December 1980, p. 1.
5. See also **Valley Times**, 27 November 1980, p. A1, A2.
6. See also **Las Vegas Sun**, 24 November 1980, p. 4.
7. **Review Journal**, 25 November 1980, p. 1A; **Las Vegas Sun**, 23 November 1980, p. 1.

8. See also **Las Vegas Sun**, 22 November 1980, p. 3.
9. See also **Valley Times**, 18 December 1980, p. 1, 4.
10. See also **Las Vegas Sun**, 24 November 1980, p. 1.
11. **Review-Journal**, 4 December 1980, p. 3A.; **Las Vegas Sun**, 4 December 1980, p. 1; **Valley Times**, 4 December 1980, p. 1.
12. Nevada Revised Statutes, 239.020. (NRS)
19. 1980, p. 45.
13. Interview with Thomas D. Beatty, Las Vegas, 22 November 1980.

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